(2013) 03 KAR CK 0072

In the Karnataka High Court

Case No : Misc. Cvl. No. 5658 of 2009 in M.F.A. No. 1844 of 2009

Branch Manager National Insurance Co. Ltd. APPELLANT

Vs

V. Nagaraju and H.M. Shashidhar RESPONDENT

Date of Decision : 22-03-2013

Acts Referred:

Citation : (2013) 2 AKR 765 : (2013) ILR (Kar) 2292 : (2013) 5 KarLJ 647 : (2013) 3 KCCR 1931

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : A.N. Krishnaswamy, for the Appellant; Sridhar C.K., for R2 and Sri. K.C. Srinivas, for R1, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Satyanarayana, J.—The second respondent Insurance Company in WCA. NFC/CR-169/2005 has come up in this appeal impugning the order dated 30.1.2008 passed by the Commissioner for Workmen''s Compensation Sub-Division-2, Mandya. This appeal is filed contending that there is gross error on the part of Commissioner for Workmen''s Compensation in appreciating the material evidence available on record, while awarding compensation to the claimant before the Commissioner under the head loss of earning capacity which is quantified to an extent of 50% when the claimant who is said to be driver has got his driving license renewed twice subsequent to the date of the accident. Incidentally this appeal is filed with inordinate delay of 345 days. Hence application in Misc. Cvl. 5658/09 is filed seeking condonation of delay.

2. Heard learned counsel for the appellant as well as contesting respondent - claimant before the Commissioner. Perused the affidavit filed in support thereof.

3. On going through the same, it is clearly seen that there is an attempt on the part of appellant Insurance Company to explain the inordinate delay caused in filing this appeal What is stated in the affidavit is the date on which the claim

petition was allowed and the date when this appeal is filed, in between the delay of nearly one year is tried to be explained as procedural delay That one of the Officer of appellant misplaced the file, it could not be traced to file the appeal within the period of limitation, hence there is delay When this court expressed that the aforesaid reasons are not sufficient to condone the delay of nearly one year, time was sought to file better affidavit At that time it was made clear that the Regional Manager should ascertain and find out which of its Officer is responsible for the delay, so that cost if any imposed while condoning the delay, the same could be recovered from that officer

4. Subsequently, this day another application is filed wherein whatever was previously stated in the earlier affidavit is elaborately explained, there is nothing on record to show, which of its Officer is responsible for causing the inordinate delay of 345 days in filing the appeal A convenient method is adopted by the person who has sworn to the affidavit in trying to brow-beat the issue by explaining unwanted and uncalled issues in the affidavit, thereby trying to deviate the matter from the original path.

5. At this juncture, this Court puts on record unhealthy practice prevailing in Insurance Companies i.e., in cases where compensation is awarded to claimants who are not entitled to be compensated or excessive compensation is awarded, either file gets conveniently misplaced or lost. The person who is in charge of the file squat over the matter by not giving an opinion to file appeal or not, waits for the Insurance Company to deposit the compensation and the claimant to withdraw the same, and thereafter appeal will be filed filing application seeking condonation of delay by explaining the delay as if it is due to procedural reasons.

6. Infact aforesaid lapse on the part of officers of Insurance Company is tried to be legalized by securing an order on applications filed seeking condonation of delay. The aforesaid conduct of the officer of Insurance companies is highly deplorable. In spite of this Court observing the same on several earlier occasions in various judgments passed in this regard, there is no change in the conduct of the officers of Insurance Company. Infact earlier a suggestion was made by this Court to the Insurance Company to identify the officers responsible for the same so that such acts could be curtailed by making concerned officer responsible for the delay by ordering payment of cost. In response to this it was stated that the Insurance Company is not interested in exposing their Officers and they would rather accept the order passed by this Court in this behalf. If this is the arrogant response the Insurance Company could give to the suggestion of the Court, this Court does not find any reason to show lenience in condoning the inordinate delay in filling the appeal to protect the interest of appellant when fraudulent cases are allowed awarding excessive compensation where there is no cause of action for seeking compensation at all.

7. This matter also appears to be one such matter where a driver said to haw suffered minor injuries, filed claim petition seeking compensation before Commissioner for Workmen''s Compensation. In the said proceedings the

Commissioner like benevolent god without looking in to the merits of the case liberally awarded compensation by taking disability of the claimant at 50% when there is no material on record to show that claimant has suffered any disability. When there is proof to show that he has renewed his driving license after the accident, endorsement to that effect is also produced before the Commissioner. When material on record disclose that even after the accident, claimant was capable of continuing his profession as driver as he was doing earlier, the Commissioner holding that there is 50% disability to claimant, is nothing short of sheer irresponsible way of assessing disability and thereby awarding compensation in the said proceedings. It is surprising how in such serious case, file can go missing. The officer of appellant is either careless or deliberately failed to take steps to file the appeal. Sri. A.N. Krishna Murthy, learned counsel for the appellant/ Insurance Company has no answer for this.

8. In the light of aforesaid observations this Court is not inclined to condone the delay. At the same time this Court is also not inclined to see that by dismissing this appeal, the fraud played by the claimant and the Commissioner should not go un-questioned. In that view of the matter, the application in Misc. Cvl. 5658/2009 though does not call for any relief is being allowed subject to payment of Rs. 5,000/-. Since the Regional Manager of the appellant Insurance Company is not inclined to disclose the name of errant officer and try to protect him, he is responsible to pay the same from his pocket since he is the Principal Officer of the appellant Insurance Company for Bangalore Region. His incompetence in controlling his Officers in discharging their duties has led to appeals being filed belatedly. Therefore, imposing of cost Rs. 5,000/- to be recovered from his salary and paid to the registry of this court may show some improvement in dealing with such case in future. Accordingly, Misc. Cvl. 5658/09 is allowed subject to condition that the Regional Manager of appellant company to deposit Rs. 5,000/- in the registry of this Court within two weeks from today. Otherwise on expiry of 15th day from today, the application stands dismissed and consequently, the appeal also stands dismissed.